

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 258

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO FAMILY VIOLENCE; ENACTING THE CONFIDENTIAL ADDRESS PROGRAM ACT; PROVIDING FOR THE USE OF A SUBSTITUTE ADDRESS BY PROGRAM PARTICIPANTS; AMENDING, RECOMPILING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Confidential Address Program Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Confidential Address Program Act:

A. "agency" means any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico or local government and every office

.180756.2

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 or officer thereof;

2 B. "certification card" means a card issued by the
3 secretary of state certifying that an individual is a
4 participant in the confidential address program;

5 C. "confidential address program" means the program
6 established pursuant to the Confidential Address Program Act
7 under the auspices of the office of the secretary of state
8 whereby participants in that program are entitled to use a
9 substitute address for all purposes;

10 D. "participant" means an individual who has
11 applied for and been accepted into the confidential address
12 program; and

13 E. "substitute address" means the address of the
14 secretary of state that may be used as a substitute for a
15 participant's residential, work and mailing addresses.

16 Section 3. Section 40-13-11 NMSA 1978 (being Laws 2007,
17 Chapter 131, Section 1) is recompiled as Section 3 of the
18 Confidential Address Program Act and is amended to read:

19 "~~[SUBSTITUTE ADDRESS]~~ CONFIDENTIAL ADDRESS PROGRAM--
20 ELIGIBILITY--RECORDS.--

21 A. A victim of domestic abuse, or the victim's
22 representative pursuant to Section 31-26-3 NMSA 1978, who has
23 good reason to believe that the victim's safety is at risk may
24 apply to the secretary of state for ~~[the use of the secretary~~
25 ~~of state as a substitute address]~~ participation in the

.180756.2

underscored material = new
[bracketed material] = delete

1 confidential address program. The application shall be on a
2 form provided by the secretary of state and shall include:

3 (1) a statement that the secretary of state is
4 [~~acting~~] requested to act as an agent of the victim for
5 purposes of the forwarding of mail;

6 (2) a mailing address for forwarding received
7 mail and a telephone number where the victim can be contacted
8 by the secretary of state;

9 (3) payment of a seventy-five-dollar (\$75.00)
10 application fee, which may be waived if the applicant is
11 indigent; and

12 (4) the signature of the victim or the
13 victim's representative.

14 B. The secretary of state shall maintain a
15 confidential record of applications for [~~a substitute address~~]
16 participation in the confidential address program and forward
17 [~~any~~] mail [~~received on behalf of a victim of domestic abuse to~~
18 ~~the new mailing address provided on the application~~] as
19 outlined by the confidential address program to the
20 participant's mailing address as provided on the application.

21 C. It is unlawful for a person to knowingly attest
22 falsely or to knowingly provide incorrect information on an
23 application for participation in the confidential address
24 program. Doing so may result in prosecution by the district
25 attorney's office as a felony.

.180756.2

1 D. The secretary of state may adopt rules to
2 implement the confidential address program."

3 Section 4. [NEW MATERIAL] CONFIDENTIAL ADDRESS PROGRAM
4 PARTICIPATION--RENEWAL--WITHDRAWAL--CANCELLATION OF
5 PARTICIPATION.--

6 A. An individual's participation in the
7 confidential address program shall continue for a three-year
8 period unless the participant withdraws from the program at an
9 earlier date.

10 B. A participant may renew participation in the
11 confidential address program for a three-year period by filing
12 with the secretary of state a copy of the participant's current
13 certification card and properly completed renewal application.

14 C. A participant may withdraw from the confidential
15 address program by submitting to the secretary of state written
16 notice of withdrawal and the participant's current
17 certification card. The withdrawal will be effective upon the
18 receipt by the secretary of state of the notice of withdrawal
19 and current certification card.

20 D. The secretary of state may cancel a
21 participant's participation in the confidential address program
22 if:

23 (1) the participant has been in the program
24 for three years and a renewal has not been requested;

25 (2) the participant knowingly provided false

.180756.2

underscored material = new
[bracketed material] = delete

1 or incorrect information when applying for participation;

2 (3) the participant obtains a name change and
3 does not notify the secretary of state within forty-eight hours
4 of the effective date of the name change;

5 (4) the participant no longer resides at the
6 residential address listed on the program application and has
7 not provided seven days prior notice of the change of address;
8 or

9 (5) mail forwarded to the participant is
10 returned to the secretary of state as being nondeliverable or
11 unclaimed.

12 E. The secretary of state shall attempt to contact
13 by telephone and send written notification of the cancellation
14 of a participant in the program to the participant's last known
15 address.

16 Section 5. [NEW MATERIAL] USE OF SUBSTITUTE ADDRESS.--

17 A. Upon demonstration of a participant's
18 participation in the confidential address program, an agency, a
19 state, a magistrate, a municipal or metropolitan court, a
20 county, a municipality or any other governmental entity shall
21 accept the secretary of state as the designated address of the
22 participant for purposes of providing a residential, work or
23 mailing address for the participant, unless the agency has
24 received a written exemption pursuant to Section 7 of the
25 Confidential Address Program Act.

.180756.2

underscoring material = new
[bracketed material] = delete

1 B. When creating state and local government records
2 or updating existing records, a participant shall show the
3 participant's certification card to the agency and request the
4 use of the substitute address in lieu of the participant's
5 actual residential, work and mailing addresses.

6 C. The agency employee assisting the program
7 participant may make a file photocopy of the certification
8 card.

9 D. The agency shall accept the substitute address
10 unless the agency has received a written exemption pursuant to
11 Section 7 of the Confidential Address Program Act.

12 E. At the time of a participant's request to enroll
13 in a public school, the school may contact the secretary of
14 state to verify the enrollment eligibility of the participant.
15 Eligibility for the participant's enrollment shall be
16 determined using the current residential address shown in the
17 participant's records with the confidential address program.
18 All school correspondence mailed to the participant or the
19 participant's parents or guardians shall be sent to the
20 substitute address.

21 F. A participant in the confidential address
22 program who is otherwise qualified to vote may register to vote
23 through the county clerk in the participant's area. A
24 participant shall vote primarily by absentee ballot and shall
25 receive absentee ballots by mail through the secretary of state

.180756.2

underscoring material = new
[bracketed material] = delete

1 for all local, state and national elections in which the
2 participant is eligible to vote. All voting and election
3 records of a participant shall be maintained in a manner
4 ensuring that those records are accessible only to selected
5 authorized personnel and that they shall not be publicly
6 accessible. A participant's residential address shall not be
7 disclosed to any person for any purpose except by court order
8 and shall not appear on any public list or report produced by a
9 county clerk. The secretary of state shall notify the
10 appropriate county clerk when:

11 (1) a participant's program certification has
12 expired;

13 (2) a participant's program certification has
14 been withdrawn or canceled;

15 (3) a participant's absentee ballot is
16 returned as being nondeliverable; or

17 (4) a participant's residential address has
18 changed.

19 G. A participant shall be exempt from any
20 obligation to serve on a jury.

21 Section 6. [NEW MATERIAL] SERVICE OF PROCESS.--

22 A. The secretary of state is designated as agent
23 for service of process and receipt of mail for a participant.

24 B. Service of any summons, writ, notice, demand or
25 process upon a participant may be accomplished by mailing to

.180756.2

underscored material = new
[bracketed material] = delete

1 the secretary of state or by delivering in person to the office
2 of the secretary of state.

3 C. When a summons, writ, notice, demand or process
4 is served on the secretary of state, the secretary of state
5 shall immediately forward a copy to the participant by
6 first-class mail to the participant's mailing address shown in
7 the participant's records with the confidential address
8 program. All time periods related to service of process are
9 extended by five business days for a participant.

10 D. The secretary of state shall maintain in a
11 participant's records with the confidential address program a
12 record of all summonses, writs, notices, demands and processes
13 served upon the secretary of state for that participant, which
14 record shall include the date of such service and the action
15 taken by the secretary of state.

16 Section 7. [NEW MATERIAL] EXEMPTION FROM USE OF A
17 SUBSTITUTE ADDRESS.--

18 A. An agency may request an exemption from the
19 requirement of the Confidential Address Program Act to use a
20 participant's substitute address. If requesting an exemption,
21 an agency shall provide in writing to the secretary of state
22 the following:

23 (1) identification of the statute or
24 administrative rule that demonstrates the agency's bona fide
25 need for the use of the actual residential, work or mailing

.180756.2

underscoring material = new
[bracketed material] = delete

1 address of a participant;

2 (2) identification and description of the
3 specific purpose for which the exemption is requested;

4 (3) identification of the individuals by title
5 or job function within the agency who will have access to the
6 actual residential, work or mailing address of a participant;

7 (4) an explanation of how the use of the
8 substitute address will prevent the agency from meeting its
9 obligations pursuant to the statute or rule; and

10 (5) an explanation of why the agency cannot
11 meet its statutory or administrative obligations through a
12 change in its internal procedures.

13 B. The secretary of state's determination to grant
14 or deny a request for exemption will be based on, but not
15 limited to, an evaluation of the information provided pursuant
16 to this section.

17 C. If the secretary of state determines that an
18 agency has a bona fide statutory or administrative requirement
19 for the use of the actual residential, work or mailing address
20 of a participant and that the address will be used only for
21 those statutory and administrative purposes, the secretary of
22 state may issue a written exemption for the agency use of the
23 participant's substitute address. The written exemption may
24 include:

25 (1) the agency's obligation to maintain the

.180756.2

underscored material = new
[bracketed material] = delete

1 confidentiality of a program participant's actual residential,
2 work or mailing address;

3 (2) limitations on the use and access to the
4 actual residential, work or mailing address of a participant;

5 (3) the term during which the exemption is
6 authorized for the agency;

7 (4) designation of the format in which the
8 actual residential, work or mailing address of a participant
9 shall be maintained;

10 (5) designation of an address information
11 disposition date after which the agency may no longer maintain
12 a record of the actual residential, work or mailing address of
13 a participant;

14 (6) a notification to a participant of any
15 request made or approval for exemption; and

16 (7) any provisions and qualifications
17 determined appropriate by the secretary of state.

18 D. The secretary of state's denial of an agency
19 exemption request shall be made in writing and include a
20 statement of the specific reasons for the denial.

21 E. The secretary of state shall keep a record of
22 all exemptions and all documentation relating to requests for
23 exemption.

24 Section 8. [NEW MATERIAL] CONFIDENTIALITY--DISCLOSURE OF
25 RECORDS.--

.180756.2

1 A. The secretary of state shall not make any
2 records in the files of a participant available for inspection
3 or copying unless directed by a court order to a person
4 identified in the order. The participant information disclosed
5 to a person identified in a court order shall be maintained in
6 strict confidentiality by the party receiving the information.

7 B. The secretary of state may confirm or verify the
8 participation of a participant in the confidential address
9 program.

10 C. The secretary of state shall provide immediate
11 notification to a participant of a disclosure of the
12 participant's residential, work or mailing address if that
13 notification is not otherwise prohibited by law.

14 D. No notice or opportunity shall be given to a
15 participant in the confidential address program when the
16 request for disclosure is made by a law enforcement agency
17 conducting a criminal investigation where such notice would
18 jeopardize the safety of law enforcement personnel.

19 E. An agency employee shall not question the
20 participant regarding the details or circumstances of the
21 participant's participation in the confidential address
22 program.

23 F. No person shall be compelled to disclose the
24 residential, work or mailing address of a participant during
25 the discovery phase of a judicial proceeding, or during a

underscored material = new
[bracketed material] = delete

1 proceeding before a court of competent jurisdiction or
2 administrative tribunal, unless the court or administrative
3 tribunal finds, based upon the preponderance of the evidence,
4 that the disclosure is required in the interest of justice. A
5 court or administrative tribunal may seal the portion of any
6 record that contains a program participant's actual address.

7 Section 9. Section 1-4-5.1 NMSA 1978 (being Laws 1993,
8 Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,
9 as amended) is amended to read:

10 "1-4-5.1. METHOD OF REGISTRATION--FORM.--

11 A. A qualified elector may apply for registration
12 by mail, in the office of the secretary of state or county
13 clerk or with a registration agent or officer.

14 B. A person may request certificate of registration
15 forms from the secretary of state or any county clerk in
16 person, by telephone or by mail for that person or for other
17 persons.

18 C. Except as provided in Subsection D of this
19 section, a qualified elector who wishes to register to vote
20 shall fill out completely and sign the certificate of
21 registration. The qualified elector may seek the assistance of
22 any person in completing the certificate of registration.

23 D. A qualified elector who ~~[has filed for an order~~
24 ~~of protection pursuant to the provisions of the Family Violence~~
25 ~~Protection Act and who presents a copy of that order from a~~

.180756.2

underscored material = new
[bracketed material] = delete

1 ~~state or tribal court to the registration officer]~~ is a
2 participant in the confidential address program pursuant to the
3 Confidential Address Program Act may register in the manner
4 provided in Subsection F of Section 5 of that act and shall not
5 be required to provide physical residence address information
6 on the certificate of registration.

7 E. Completed certificates of registration may be
8 mailed or presented in person by the registrant or any other
9 person to the secretary of state or presented in person by the
10 registrant or any other person to the county clerk of the
11 county in which the registrant resides.

12 F. If the registrant wishes to vote in the next
13 election, the completed and signed certificate of registration
14 shall be delivered or mailed and postmarked at least twenty-
15 eight days before the election.

16 G. Upon receipt of a certificate of registration,
17 the secretary of state shall send the certificate to the county
18 clerk in the county where the qualified elector resides.

19 H. Only when the certificate of registration is
20 properly filled out, signed by the qualified elector and
21 accepted for filing by the county clerk as evidenced by the
22 county clerk's signature or stamp and the date of acceptance
23 thereon and when notice has been received by the registrant
24 shall it constitute an official public record of the
25 registration of the qualified elector.

.180756.2

underscored material = new
[bracketed material] = delete

1 I. The secretary of state shall prescribe the form
2 of the certificate of registration, which form shall be a
3 postpaid mail-in format and shall be printed in Spanish and
4 English. The certificate of registration form shall be clear
5 and understandable to the average person and shall include
6 brief but sufficient instructions to enable the qualified
7 elector to complete the form without assistance. The form
8 shall also include:

9 (1) the question "Are you a citizen of the
10 United States of America?" and boxes for the applicant to check
11 to indicate whether the applicant is or is not a citizen;

12 (2) the question "Will you be at least
13 eighteen years of age on or before election day?" and boxes for
14 the applicant to check to indicate whether the applicant will
15 be eighteen years of age or older on election day;

16 (3) the statement "If you checked 'no' in
17 response to either of these questions, do not complete this
18 form.";

19 (4) a statement informing the applicant that:

20 (a) if the form is submitted by mail by
21 the applicant and the applicant is registering for the first
22 time in New Mexico, the applicant must submit with the form a
23 copy of: 1) a current and valid photo identification; or 2)
24 a current utility bill, bank statement, government check,
25 paycheck, student identification card or other government

.180756.2

underscored material = new
[bracketed material] = delete

1 document, including identification issued by an Indian nation,
2 tribe or pueblo, that shows the name and current address of the
3 applicant; and

4 (b) if the applicant does not submit the
5 required identification, the applicant will be required to do
6 so when voting in person or absentee; and

7 (5) a statement requiring the applicant to
8 swear or affirm that the information supplied by the applicant
9 is true."

10 Section 10. APPROPRIATION.--Ninety-one thousand seven
11 hundred dollars (\$91,700) is appropriated from the general fund
12 to the office of the secretary of state for expenditure in
13 fiscal years 2010 and 2011 to implement the Confidential
14 Address Program Act. Any unexpended or unencumbered balance
15 remaining at the end of fiscal year 2011 shall revert to the
16 general fund.

17 Section 11. SEVERABILITY.--If any part or application of
18 this act is held invalid, the remainder or its application to
19 other situations or persons shall not be affected.

20 Section 12. EMERGENCY.--It is necessary for the public
21 peace, health and safety that this act take effect immediately.